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October 6, 2005

Chairman Ron Jones
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Response of Sprint Nextel Corporation and LTD Holding Company to the Petition
of Communications Workers of America, AFL-CIO for Leave to Intervene
Docket No. 05-00240

Dear Chairman Jones:

Please find enclosed an original and thirteen (13) copies of Response of Sprint Nextel Corporation and LTD Holding Company to the Petition of Communications Workers of America, AFL-CIO for Leave to Intervene in the above-referenced Docket.

Please do not hesitate to contact me if you have any questions concerning this request.

Sincerely yours,

Edward Phillips

HEP:sm

Enclosures

cc: Parties of Record

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In the Matter of:)	
)	
Application of Sprint Nextel Corporation)	
for Approval of the Transfer of Control of)	
United Telephone-Southeast, Inc., Sprint)	Docket No. 05-00240
Long Distance, Inc. and Sprint Payphone)	
Services, Inc. From Sprint Nextel)	
Corporation to LTD Holding Company)	
)	

**RESPONSE OF SPRINT NEXTEL CORPORATION AND
LTD HOLDING COMPANY TO THE PETITION OF COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO FOR LEAVE TO INTERVENE**

I. INTRODUCTION

On August 24, 2005, Sprint Nextel Corporation ("Sprint Nextel" or "Applicant") filed a verified application ("Application") before the Tennessee Regulatory Authority (the "Authority") seeking approval for the transfer of control of United Telephone Company – Southeast, Inc. ("UTSE"), Sprint Long Distance, Inc. ("Sprint Long Distance"), and Sprint Payphone Services, Inc. ("SPSI") to LTD Holding Company. Thirty-seven days later, on September 29, 2005, the Communications Workers of America, AFL-CIO ("CWA") filed a petition for leave to intervene ("Petition"). For the reasons discussed below, the Authority should deny the Petition.

As the Applicant has demonstrated in the Application and related submissions, the Authority should approve the Application without convening a contested case proceeding. The subject transaction involves merely the change in the identity of the holding company that will own the stock of UTSE, Sprint Long Distance, and SPSI. The affidavits filed with the

Application demonstrate that there are no adverse consequences for Tennessee consumers, business or residential, and that the proposed transaction furthers the public interest.

The concerns raised by CWA in the Petition concern employment opportunities, employee benefits and staffing issues that are not relevant to the Authority's review of the proposed transaction. Such concerns are subject to collective bargaining negotiations and, if any cognizable injury occurs, properly are addressed by the agencies with jurisdiction over them, *e.g.*, the National Labor Relations Board (the "NLRB").¹ Thus, the Authority would lack jurisdiction to address such concerns in this proceeding. As a result, these issues do not give CWA a legal interest in this proceeding and the Authority should not permit CWA to intervene.

The service quality concerns raised by CWA center on CWA's unfounded allegations that the transaction proposed by Sprint Nextel and LTD Holding Company somehow would leave the regulated company without the necessary financial, technical and managerial resources, even though no change is occurring in the regulated company. Even if these allegations had merit, CWA's proposed relief, that "Tennessee telephone customers are entitled to a return in the form of network investment," cannot support a protectable legal interest because UTSE is a price regulated company and no longer a rate of return regulated entity.² For this additional reason, the Authority should deny the Petition.

¹ See, *e.g.*, 29 U.S.C. § 160(a) (creating the NLRB which "is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice . . . affecting commerce." See generally the federal Labor-Management Relations Act, 1947, 29 U.S.C. § 141, *et. seq*

² UTSE was granted price regulation by an order of the Tennessee Public Service Commission entered on September 20, 1995 in Docket No. 95- 02615 Under rate of return regulation, the Authority, as did its predecessor the Tennessee Public Service Commission, has the power "to require a utility to use its projected excess earnings to expand or improve services to its customers," which would include network investment. See *Tennessee Cable Television Ass'n v. Public Serv Comm'n.*, 844 S.W.2d 151 (Tenn Ct. App. 1992). However, since UTSE is no longer regulated in this fashion, it is clear that such power cannot be exerted by the Authority. See Application at Paragraph 34, p. 15. See also the Affidavit of Kent W. Dickerson at Paragraph 15, p. 7.

II. LAW AND ARGUMENT

A. A Petition to Intervene Must State a Cognizable Legal Interest

Tenn. Code Ann. § 4-5-310(a)(2) requires that a party demonstrate that some aspect of its “legal interest may be determined in the proceeding” before it can be permitted to intervene. Where the interest identified by the party, in this case the interest of employees in their labor relations with a company, are not within the agency’s jurisdiction, the agency should deny the petition.

B. CWA Fails to State a “Legal Interest”

In Tennessee, “the relevant inquiry is whether the [party] has shown an injury to himself that is likely to be redressed by a favorable decision.” This standard was applied by the Tennessee Court of Appeals in *Tenn. Env. Coun. v. Solid Waste D. C. Bd.*, 852 S.W.2d 893 (Tenn. Ct. App. 1992).³ While the facts are different, the court in *Tenn. Env. Coun.*, set forth the standards in Tennessee to be followed in determining if a party has standing.

In this instance, CWA fails to demonstrate a clear injury to itself that can be redressed by the Authority. Instead, CWA relies heavily on employment concerns that are not within the jurisdiction of the Authority. Thus, the Authority should reject the intervention to the extent it invites the Authority to examine matters related to labor relations or other employment concerns.

As to the other, hypothetical service-related concerns raised by CWA, UTSE has, and will “continue to provide quality services for our customers” in Tennessee.⁴ As is shown in the Application and the Affidavits of Mr. Sokol and Mr. Dickerson, UTSE will focus its efforts on its local customers, network investment⁵ and providing customers with quality service.⁶ If there is concern regarding quality of service issues, these matters can be investigated more effectively

³ See also *Simmon v Eastern Ky Welfare Org.*, 426 U.S. 26, 96S. Ct. 1917, 48 L Ed 2d 450 (1976)

⁴ See the Affidavit of Thomas W. Sokol at Paragraph 13, p.6.

⁵ See the Affidavit of Kent W. Dickerson at Paragraph 15, p. 7

⁶ See Application at Paragraph 12, p. 6.

and appropriately by the Authority Staff in its review of the Application. CWA cannot interject itself into such matters in an effort to fabricate a “legal interest” sufficient to support intervention in this proceeding.

C. No Specific Facts Have Been Alleged to Warrant Intervention

Under Tenn. Comp. R. & Regs. 1220-1-2-.08, a request for intervention may be denied if the petitioner fails to set forth “those facts that demonstrate that the petitioner’s legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding” As discussed above, the labor issues raised by CWA are not within the Authority’s jurisdiction and thus do not support a request for intervention. Similarly, the service-related concerns CWA raises fail to support such a request.

Historically, the Authority has relied on its expert Staff to determine if applications for transfer of control under Tenn. Code Ann. § 65-4-113 have met with the requirements of the statute. As such, quality of service is within the purview of the Authority to consider and Tenn. Code Ann. § 65-4-113 directs the Authority to do so when reviewing Sprint Nextel’s Application and supporting Affidavits. Under this statute, the Authority is the body entrusted with ensuring that UTSE will have the financial, technical and managerial wherewithal to provide quality services that are being transferred to LTD Holding Company. UTSE believes that the Authority Staff will be satisfied in its examination of whether UTSE has obligated itself to provide quality services and provide necessary funding to promote investment in its network and continue to offer technologically advanced services to its Tennessee customers.⁷ Moreover, and as noted above, the relief suggested by CWA – some kind of a rate of return regulation – is not within the scope of available relief. Thus, the Petition fails to meet the requirements of Authority Rule 1220-1-2-.08 and must be denied.

⁷ See the Affidavit of Thomas W. Sokol at Paragraph 11, p. 5 concerning quality of service and at Paragraph 15, p. 7 concerning the availability of high-speed internet services.

D. CWA's Intervention Would Delay and Disrupt This Proceeding

CWA's Constitution, which was revised in August, 2004, expressly references the lawful purposes for which it was established. One of the purposes specifically referenced appears in Article III of CWA's Constitution, which states that CWA "shall seek to improve the conditions of the workers with respect to wages, hours, working conditions and other conditions of employment." In addition, another purpose of the CWA is "to unite the workers within its jurisdiction into a single cohesive labor union for the purpose of furthering collective efforts." However, while CWA's efforts to pursue the employment concerns raised in its petition may be consistent with its charter, this proceeding before the Authority is not the proper forum for CWA to pursue this agenda.

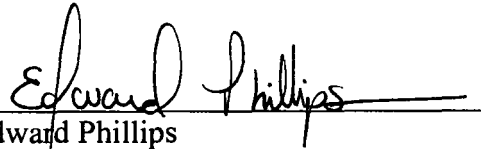
Under Tenn. Code Ann. § 4-5-310(b), the Authority can deny a petition to intervene if such petition is not in the interests of justice and would "impair the orderly and prompt conduct of the proceedings." Here, CWA's intervention would stall the proceeding by raising employment-related issues which have no bearing on the Authority's review and are not within its jurisdiction. For example, CWA takes issue with the fact that the Application is silent on how Sprint Nextel and UTSE plan to "divide Sprint's pension assets, life insurance assets and retiree health fund assets."⁸ In addition, CWA requests that the Authority assure employment opportunities exist after the separation. These issues are not within the Authority's jurisdiction and including them in the proceeding would only serve to delay and distract.

⁸ See Paragraph 3, p. 2 of CWA's Petition for Leave to Intervene. Issues concerning pensions, life insurance and retiree health fund assets fall under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended. ERISA sets forth requirements for the division of assets and liabilities in connection with a transfer of control as is contemplated in the Application. Any attempts by the CWA to raise these concerns before the Authority is misplaced

III. CONCLUSION

The Authority should deny CWA's Petition for Leave to Intervene. CWA has failed demonstrate any rights, duties, privileges, immunities or other legal interests that will be determined in this proceeding as is required by Tenn. Comp. R. & Regs. 1220-1-2-.08. Further, CWA's petition seeks only to delay the consideration of Sprint Nextel's Application and is not warranted under Tenn. Code Ann. § 4-5-310. Sprint respectfully requests that the Authority move forward with its consideration of the Application without any further delay.

Respectfully submitted this 6th day of October, 2005.



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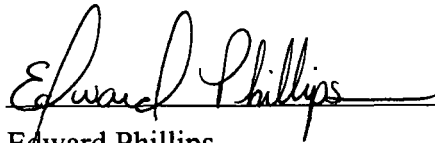
Sprint Nextel Corporation, United Telephone-
Southeast, Inc., Sprint Long Distance, Inc., and
Sprint Payphone Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of Response of Sprint Nextel Corporation and LTD Holding Company to the Petition of Communications Workers of America, AFL-CIO for Leave to Intervene upon counsel for Communications Workers of America, AFL-CIO by depositing a copy in the United States Mail, first-class postage prepaid.

This 6th day of October, 2005.

Donald L. Scholes
Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue North, Fourth Floor
Nashville, TN 37219

A handwritten signature in cursive script, reading "Edward Phillips", is written over a horizontal line.

Edward Phillips
United Telephone-Southeast, Inc.